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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,877	12/11/2001	Matthew L. Albert	600-1-291 CON	4555

23565 7590 04/14/2004

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EXAMINER

NICKOL, GARY B

ART UNIT	PAPER NUMBER
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1642

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/014,877

Applicant(s)

ALBERT ET AL.

Examiner

Gary B. Nickol Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 1-27 and 31-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Re: Albert *et al.*

Date of priority: 2/20/1998

Claims 1-48 are pending.

Claims 1-27, 31-48 have been withdrawn from further consideration by the examiner under 37

CFR 1.142(b) as being drawn to non-elected inventions.

Claims 28-30 are pending and are currently under consideration.

The Election filed January 20, 2004 in response to the Office Action of December 17, 2003 is acknowledged and has been entered.

Applicant's election with traverse of Group VIII, claims 28-30 is further acknowledged. The traversal is on the ground(s) that that the groups designated by the Examiner fail to define compositions and methods, with properties so distinct as to warrant a separate examination and search. Applicants further assert that the search for any of the methods separately classified by the Examiner "as" the invention of Group VIII would require an additional search of the identical classes wherein the claims of Groups III, V, X and XI are classified, thus resulting in a duplicate search for the same material. Thus, Applicants submit that the search and examination of the entire Application, or, at least, of Groups III, V, X and XI with Group VIII can be made without serious burden, and therefore the Examiner should examine all of the claims of the Application on the merits. These arguments have been carefully considered but are not found persuasive. MPEP 802.01 provides that restriction is proper between inventions that are

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independent or distinct. Here, the inventions of the various groups are distinct for the reasons set forth in restriction requirement mailed August 5, 2003. Further, it appears that applicant's are attempting to define the Examiner's burden of search solely by classification of the restricted subject matter. As a first matter, it should be noted that Groups II, V, X and XI are not all classified the same as elected Group VIII. Secondly, as to the question of any burden of search, the classification of subject matter is merely one indication of the burdensome nature of the search involved. The literature search, particularly relevant in this art, is not coextensive and is much more important in evaluating the burden of search. Different searches and issues are involved in the examination of each group. For these reasons the restriction requirement is deemed to be proper and is therefore made FINAL.

Specification

The specification is objected to for the following reason: The specification on page 1 should be amended to reflect the priority status of the present application, for example:

This application is a continuation of U.S. Application No. 09/251,896, filed 02/19/199, now US Patent No. 6,602,709.

Information Disclosure Statement

There does not appear to be an IDS filed in this particular application. Only, the previously signed IDS (signed by another Examiner) was present. Thus, no IDS was considered in this application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 28-30 are rejected under 35 U.S.C. 102(b) as being anticipated by ENGLEMAN *et al.* (WO 94/02156, February 3, 1994).

Engleman *et al.* teach a method of assessing cytotoxic T lymphocyte activity comprising contacting (i.e. pulsing) antigen presenting dendritic cells (DC) with a variety of antigen donors including bacterial, parasitic, fungal, viral, and tumor antigens (page 20). The reference additionally teaches that the antigens may be purified, recombinant, or exist as whole organisms or cells in viable or dead forms.

The reference further teaches exposing the antigen presenting DCs to a population of T lymphocytes to be assayed for their ability to exhibit killer cell activity; and assaying the cytotoxic activity of the T lymphocytes exposed to the antigen presenting DCs (pages 21-25, 30-31).

Although the reference does not specifically teach contacting the dendritic cells with “apoptotic cells”, Engleman *et al.* teach that pulsing DCs includes contact with *irradiated* cells (page 19, 1st para). Thus, since the specification teaches that irradiation is one method of inducing cells to undergo apoptosis (page 4, lines 30+), the teachings of Engleman *et al.* anticipate the claimed invention.

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No claim is allowed.

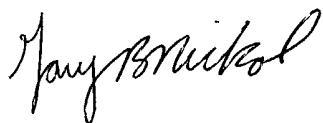
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary B. Nickol Ph.D. whose telephone number is 571-272-0835. The examiner can normally be reached on M-Th, 8:30-5:30; alternate Fri., 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary B. Nickol Ph.D.
Primary Examiner
Art Unit 1642

April 2, 2004



GARY NICKOL
PRIMARY EXAMINER



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